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APR 11 1962
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 822

TRINIDAD CORPORATION, Claimant of the Tankship LYONS CREEK,

Petitioner,

versus

INDIAN TOWING COMPANY, INC.,

Respondent.

SUPPLEMENT TO PETITION FOR CERTIORARI

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Of Counsel

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Respondent has now filed herein a brief in opposition, containing one statement which cannot go unanswered, and the indulgence of the court is respectfully asked to permit us to supplement briefly the argument made in Section VI of the petition heretofore filed.

The particular statement to which exception must be taken appears on page 2 of the brief, to the effect that "In fact, passing signals were exchanged," citing R. 28, 29.

The captain of the COMANCHE did testify, at the place cited, that he blew two blasts for a starboard to starboard passage and got a response. We pass without further comment the fact that, if true, that itself was a flagrant viola-

tion of the rules by the COMANCHE; the rules (Petition, p. 33) specifically provide the pilot of the descending vessel (COMANCHE) "shall not" blow the first signal, but, if the other vessel has not whistled when they are within one-half mile of each other, he shall blow the first danger signal, which the COMANCHE did not do.

Much more important, however, is that this statement, itself indicating a violation of law, was not insisted upon below, where the whole case was tried on the fact that the LYONS CREEK did not know of the presence of the COMANCHE. The independent witnesses from the SAN BERNARD, who testified as witnesses for the COMANCHE, testified squarely that there was no exchange of signals between the COMANCHE and the LYONS CREEK (R. 182-191, 195, 201, 208, 209, 234-236, 242); and, of course, the LYONS CREEK exchanged no signals with a vessel of whose very presence she was ignorant. In the findings of fact and conclusions of law which respondent prepared for the District Court and which the District Court entered without change, respondent did not include this embarrassing bit of testimony, and there was not a syllable in those findings with regard to this alleged exchange of signals. So, too, in the opinion of the Court of Appeals there was not a single reference to this alleged exchange, an exchange which, of course, did not take place.

Why this fragmentary bit of evidence, disproved by respondent's own witnesses, and omitted, obviously because too patently untrue, from respondent's own findings of fact and conclusions of law, should now be revived to confuse the case in this court is difficult to understand.

So, too, the footnote with regard to lights (brief, page 2) significantly omits the fact that not only were the navigation lights at the head of the barge placed on the deck instead of at the required height above the water line, but also were not visible the required three miles (R. 62) and were not even shown to have exhibited the required arc of visibility; that is, to have been in such a position that they could have been seen by the navigators of the LYONS CREEK. (R. 64, 129-138).

As we have previously stated, the case involves six admitted violations of the rules, rules specifically designed for alerting the oncoming vessel to the other's presence, is one in which the sole cause of the accident was the failure of one vessel to be advised of the other's presence, and sharply raises the legal question of the effect to be given to those violations of mandatory statutory duties.

It is respectfully requested that a writ of certiorari herein be granted.

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April ___, 1962.